

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

DSS TECHNOLOGY MANAGEMENT, INC.,	§	
	§	Civil Action No. 6:15-cv-00130-JRG
Plaintiff,	§	
v.	§	
	§	JURY TRIAL DEMANDED
INTEL CORPORATION, et al.,	§	
Defendants.	§	

**DELL'S ORIGINAL ANSWER AND COUNTERCLAIMS
TO PLAINTIFF'S ORIGINAL COMPLAINT**

Defendant Dell Inc. ("Dell") presents its Original Answer and Counterclaims to Plaintiff DSS Technology Management, Inc.'s ("DSS") Original Complaint ("Complaint," Dkt. 1). Paragraphs 1-88 of the Answer below correspond to the same numbered paragraphs in the Complaint. Dell specifically denies all allegations in the Complaint to the extent they are not specifically admitted below.

I. ANSWER

The Parties

1. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint, and therefore denies those allegations.

2. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Complaint, and therefore denies those allegations.

3. Dell admits the allegations of Paragraph 3 of the Complaint.

4. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Complaint, and therefore denies those allegations.

5. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Complaint, and therefore denies those allegations.

6. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of the Complaint, and therefore denies those allegations.

7. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Complaint, and therefore denies those allegations.

8. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Complaint, and therefore denies those allegations.

9. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint, and therefore denies those allegations.

10. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Complaint, and therefore denies those allegations.

Jurisdiction and Venue

11. Dell admits that the Complaint purports to state claims for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code, but denies any liability arising under those claims.

12. For purposes of this action only, Dell does not contest that venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(d) and 1400(b), but does so without prejudice to its rights under 28 U.S.C. § 1404. To the extent the remaining allegations in Paragraph 12 of the Complaint are directed to Dell, Dell denies those allegations, including specifically, any allegation of patent infringement. To the extent the remaining allegations in Paragraph 12 of the Complaint are directed to other defendants, Dell is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

13. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 of the Complaint, and therefore denies those allegations.

14. For the purposes of this action only, Dell does not contest that this Court has personal jurisdiction over Dell. Dell denies any allegation of patent infringement and any other allegation of Paragraph 14 of the Complaint that is not expressly admitted. To the extent the remaining allegations in Paragraph 14 of the Complaint are directed to Dell, Dell denies those allegations. To the extent the remaining allegations in Paragraph 14 of the Complaint are directed to other defendants, Dell is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

15. Dell denies the allegations of Paragraph 15 of the Complaint, including specifically, any allegation of patent infringement.

16. Dell denies the allegations of Paragraph 16 of the Complaint, including specifically, any allegation of patent infringement.

17. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 of the Complaint, and therefore denies those allegations.

18. For purposes of this action only, Dell does not contest that venue is proper in this judicial district or that this Court has personal jurisdiction over Dell, but does so without prejudice to its rights under 28 U.S.C. § 1404. To the extent the remaining allegations in Paragraph 18 of the Complaint are directed to Dell, Dell denies those allegations. To the extent the remaining allegations in Paragraph 18 of the Complaint are directed to other defendants, Dell is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

19. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 of the Complaint, and therefore denies those allegations.

General Allegations

20. Dell denies that U.S. Patent No. 5,965,924 (“the ’924 Patent”) was duly and legally issued by the United States Patent and Trademark Office. Dell admits that a purported copy of the ’924 Patent was attached as an exhibit to the Complaint.

21. Dell denies that U.S. Patent No. 6,784,552 (“the ’522 Patent”) was duly and legally issued by the United States Patent and Trademark Office. Dell admits that a purported copy of the ’522 Patent was attached as an exhibit to the Complaint.

22. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 of the Complaint, and therefore denies those allegations.

Alleged Infringement of the ’924 Patent

23. To the extent the allegations in Paragraph 23 of the Complaint are directed to Dell, Dell denies those allegations. To the extent the allegations in Paragraph 23 of the Complaint are directed to other defendants, Dell is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

24. To the extent the allegations in Paragraph 24 of the Complaint are directed to Dell, Dell denies those allegations. To the extent the allegations in Paragraph 24 of the Complaint are directed to other defendants, Dell is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

25. To the extent the allegations in Paragraph 25 of the Complaint are directed to Dell, Dell denies those allegations. To the extent the allegations in Paragraph 25 of the Complaint are directed to other defendants, Dell is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

26. To the extent the allegations in Paragraph 26 of the Complaint are directed to Dell, Dell denies those allegations. To the extent the allegations in Paragraph 26 of the Complaint are directed to other defendants, Dell is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

Intel's Alleged Infringement of the '924 Patent

27. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27 of the Complaint, and therefore denies those allegations.

28. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28 of the Complaint, and therefore denies those allegations.

29. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 29 of the Complaint, and therefore denies those allegations.

30. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30 of the Complaint, and therefore denies those allegations.

GameStop's Alleged Infringement of the '924 Patent

31. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 31 of the Complaint, and therefore denies those allegations.

32. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32 of the Complaint, and therefore denies those allegations.

33. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33 of the Complaint, and therefore denies those allegations.

Dell's Alleged Infringement of the '924 Patent

34. Dell denies the allegations of Paragraph 34 of the Complaint.

35. Dell denies the allegations of Paragraph 35 of the Complaint.

36. Dell denies the allegations of Paragraph 36 of the Complaint.

37. Dell denies the allegations of Paragraph 37 of the Complaint.

Wal-Mart's Alleged Infringement of the '924 Patent

38. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38 of the Complaint, and therefore denies those allegations.

39. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39 of the Complaint, and therefore denies those allegations.

40. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40 of the Complaint, and therefore denies those allegations.

Conn's Alleged Infringement of the '924 Patent

41. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 41 of the Complaint, and therefore denies those allegations.

42. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 42 of the Complaint, and therefore denies those allegations.

43. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 43 of the Complaint, and therefore denies those allegations.

NEC's Alleged Infringement of the '924 Patent

44. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 44 of the Complaint, and therefore denies those allegations.

45. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 45 of the Complaint, and therefore denies those allegations.

46. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 46 of the Complaint, and therefore denies those allegations.

AT&T's Alleged Infringement of the '924 Patent

47. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 47 of the Complaint, and therefore denies those allegations.

48. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 48 of the Complaint, and therefore denies those allegations.

49. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 49 of the Complaint, and therefore denies those allegations.

50. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 50 of the Complaint, and therefore denies those allegations.

Alleged Infringement of the '552 Patent

51. To the extent the allegations in Paragraph 51 of the Complaint are directed to Dell, Dell denies those allegations. To the extent the allegations in Paragraph 51 of the Complaint are directed to other defendants, Dell is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

52. To the extent the allegations in Paragraph 52 of the Complaint are directed to Dell, Dell denies those allegations. To the extent the allegations in Paragraph 52 of the Complaint are directed to other defendants, Dell is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

53. To the extent the allegations in Paragraph 53 of the Complaint are directed to Dell, Dell denies those allegations. To the extent the allegations in Paragraph 53 of the Complaint are directed to other defendants, Dell is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

54. To the extent the allegations in Paragraph 54 of the Complaint are directed to Dell, Dell denies those allegations. To the extent the allegations in Paragraph 54 of the Complaint are directed to other defendants, Dell is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

Intel's Alleged Infringement of the '552 Patent

55. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 55 of the Complaint, and therefore denies those allegations.

56. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 56 of the Complaint, and therefore denies those allegations.

57. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 57 of the Complaint, and therefore denies those allegations.

58. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 58 of the Complaint, and therefore denies those allegations.

GameStop's Alleged Infringement of the '552 Patent

59. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 59 of the Complaint, and therefore denies those allegations.

60. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 60 of the Complaint, and therefore denies those allegations.

61. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 61 of the Complaint, and therefore denies those allegations.

Dell's Alleged Infringement of the '552 Patent

62. Dell denies the allegations of Paragraph 62 of the Complaint.

63. Dell denies the allegations of Paragraph 63 of the Complaint.

64. Dell denies the allegations of Paragraph 64 of the Complaint.

65. Dell denies the allegations of Paragraph 65 of the Complaint.

Wal-Mart's Alleged Infringement of the '552 Patent

66. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 66 of the Complaint, and therefore denies those allegations.

67. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 67 of the Complaint, and therefore denies those allegations.

68. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 68 of the Complaint, and therefore denies those allegations.

Conn's Alleged Infringement of the '552 Patent

69. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 69 of the Complaint, and therefore denies those allegations.

70. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 70 of the Complaint, and therefore denies those allegations.

71. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 71 of the Complaint, and therefore denies those allegations.

NEC's Alleged Infringement of the '552 Patent

72. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 72 of the Complaint, and therefore denies those allegations.

73. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 73 of the Complaint, and therefore denies those allegations.

74. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 74 of the Complaint, and therefore denies those allegations.

AT&T's Alleged Infringement of the '552 Patent

75. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 75 of the Complaint, and therefore denies those allegations.

76. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 76 of the Complaint, and therefore denies those allegations.

77. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 77 of the Complaint, and therefore denies those allegations.

78. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 78 of the Complaint, and therefore denies those allegations.

Demand for Jury Trial

79. Dell acknowledges that DSS has requested a jury trial.

Prayer for Relief

80. To the extent the Prayer for Relief in Paragraph 80 of the Complaint is directed to Dell, Dell denies that DSS is entitled to any relief as requested in the Complaint or the Prayer for Relief and denies that DSS is entitled to any relief whatsoever.

81. To the extent the Prayer for Relief in Paragraph 81 of the Complaint is directed to Dell, Dell denies that DSS is entitled to the requested relief.

82. To the extent the Prayer for Relief in Paragraph 82 of the Complaint is directed to Dell, Dell denies that DSS is entitled to the requested relief.

83. To the extent the Prayer for Relief in Paragraph 83 of the Complaint is directed to Dell, Dell denies that DSS is entitled to the requested relief.

84. To the extent the Prayer for Relief in Paragraph 84 of the Complaint is directed to Dell, Dell denies that DSS is entitled to the requested relief.

85. To the extent the Prayer for Relief in Paragraph 85 of the Complaint is directed to Dell, Dell denies that DSS is entitled to the requested relief.

86. To the extent the Prayer for Relief in Paragraph 86 of the Complaint is directed to Dell, Dell denies that DSS is entitled to the requested relief.

87. To the extent the Prayer for Relief in Paragraph 87 of the Complaint is directed to Dell, Dell denies that DSS is entitled to the requested relief.

88. To the extent the Prayer for Relief in Paragraph 88 of the Complaint is directed to Dell, Dell denies that DSS is entitled to any relief whatsoever.

II. DEFENSES

First Defense: Non-Infringement

89. Dell is not infringing and has not infringed any properly construed, valid claim of the '924 Patent.

90. Dell is not infringing and has not infringed any properly construed, valid claim of the '552 Patent.

Second Defense: Patent Invalidity

91. One or more of the claims of the '924 Patent are invalid for failing to comply with 35 U.S.C. §§ 101, 102, 103, and/or 112.

92. One or more of the claims of the '552 Patent are invalid for failing to comply with 35 U.S.C. §§ 101, 102, 103, and/or 112.

Third Defense: Limitation on Damages

93. DSS's claims for damages are limited pursuant to 35 U.S.C. § 286, which prohibits recovery for activities committed more than six years before the filing of the Complaint.

94. To the extent that DSS or any of its predecessors-in-interest and/or licensees failed to properly mark any of their relevant products as required by 35 U.S.C. § 287 or otherwise give proper notice that Dell's actions allegedly infringed any claim of the '924 Patent, Dell is not liable to DSS for the acts alleged to have been performed before Dell received notice that it was allegedly infringing either the '924 Patent.

95. To the extent that DSS or any of its predecessors-in-interest and/or licensees failed to properly mark any of their relevant products as required by 35 U.S.C. § 287 or otherwise give proper notice that Dell's actions allegedly infringed any claim of the '552 Patent, Dell is not liable to DSS for the acts alleged to have been performed before Dell received notice that it was allegedly infringing either the '552 Patent.

Fourth Defense: Prosecution History Estoppel

96. DSS's enforcement of the '924 Patent is barred, in whole or in part, by the doctrine of prosecution history estoppel.

97. DSS's enforcement of the '552 Patent is barred, in whole or in part, by the doctrine of prosecution history estoppel.

Fifth Defense: Failure to State a Claim

98. The Complaint fails to state a claim for which relief can be granted.

Sixth Defense: No Double Recovery

99. DSS's request for relief is barred or otherwise limited by restrictions on double recovery.

Seventh Defense: Government Sales

100. To the extent that DSS may accuse products or services that are provided by or for the government of the United States of America, there is no jurisdiction over such claims, pursuant to 28 U.S.C. § 1498(a), outside of the U.S. Court of Federal Claims.

Eighth Defense: Laches

101. DSS's claims are barred in whole or in part by the doctrine of laches.

102. On information and belief, DSS, the previous owners of the '924 Patent, or both, unreasonably delayed in bringing suit against Dell. On information and belief, DSS's delay in bringing suit against Dell was unreasonable and inexcusable and has caused Dell material prejudice.

103. On information and belief, DSS, the previous owners of the '552 Patent, or both, unreasonably delayed in bringing suit against Dell. On information and belief, DSS's delay in bringing suit against Dell was unreasonable and inexcusable and has caused Dell material prejudice.

Reservation of Rights

104. Dell reserves the right to add any additional defenses or counterclaims that discovery may reveal.

III. ORIGINAL COUNTERCLAIMS

Parties

1. Dell is a Delaware corporation with its corporate headquarters and principal place of business at One Dell Way, Round Rock, Texas 78682.

2. As alleged in the Complaint, DSS is a corporation organized and existing under the laws of the State of Texas with its principal place of business in Plano, Texas.

Jurisdiction and Venue

3. DSS is subject to personal jurisdiction in this Court and has previously appeared before this Court for all purposes.

4. DSS alleges that it is the owner and has standing to sue for infringement of the '924 Patent and the '552 Patent.

5. DSS alleges in its Complaint that Dell has infringed the '924 Patent and the '552 Patent.

6. This Court has subject matter jurisdiction over these Counterclaims under 28 U.S.C. § 1338(a), the Patent Laws of the United States, 35 U.S.C. § 100, et seq., the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and by virtue of the Complaint. This action is based upon an actual controversy between DSS and Dell regarding the non-infringement and invalidity of the '924 Patent and the '552 Patent. A judicial declaration is necessary and appropriate to resolve these controversies.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400.

First Counterclaim: Declaratory Judgment of Non-Infringement of the '924 Patent

8. To the extent not inconsistent, Dell incorporates by reference the allegations set forth in Counterclaim Paragraphs 1-7, the same as if fully set forth herein.

9. Dell is not infringing and has not infringed any properly construed, valid claim of the '924 Patent.

10. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, Dell requests a declaration by the Court that it does not infringe any claim of the '924 Patent.

Second Counterclaim: Declaratory Judgment of Non-Infringement of the '552 Patent

11. To the extent not inconsistent, Dell incorporates by reference the allegations set forth in Counterclaim Paragraphs 1-10, the same as if fully set forth herein.

12. Dell is not infringing and has not infringed any properly construed, valid claim of the '552 Patent.

13. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, Dell requests a declaration by the Court that it does not infringe any claim of either the '552 Patent.

Third Counterclaim: Declaratory Judgment of Invalidity of the '924 Patent

14. To the extent not inconsistent, Dell incorporates by reference the allegations set forth in Counterclaim Paragraphs 1-13, the same as if fully set forth herein.

15. One or more of the claims of the '924 Patent are invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112.

16. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., Dell requests a declaration by the Court that the '924 Patent is invalid.

Fourth Counterclaim: Declaratory Judgment of Invalidity of the '552 Patent

17. To the extent not inconsistent, Dell incorporates by reference the allegations set forth in Counterclaim Paragraphs 1-16, the same as if fully set forth herein.

18. One or more of the claims of the '552 Patent are invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112.

19. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., Dell requests a declaration by the Court that the '552 Patent is invalid.

Jury Demand

Dell requests a jury trial on both its Answer and Counterclaims for all triable issues.

Dell's Prayer for Relief

Dell respectfully requests that upon trial on the merits the Court:

- (a) Enter judgment in favor of Dell and against DSS, and denying any and all of DSS's requests for relief;
- (b) Enter judgment that the Complaint be dismissed with prejudice, and that DSS take nothing by its Complaint;

- (c) Enter judgment declaring that Dell has not infringed any claim of the '924 Patent, and declaring that the '924 Patent is invalid;
- (d) Enter judgment declaring that Dell has not infringed any claim of the '552 Patent, and declaring that the '552 Patent is invalid;
- (e) Enter judgment declaring this case exceptional, if warranted;
- (f) Award to Dell all of its reasonable and necessary attorneys' fees and costs in this action and all appeals therefrom; and
- (g) Award to Dell such other and further relief, both general and special, at law or in equity, as the Court may deem just and proper.

June 5, 2015

Respectfully submitted,

By: /s/ Gilbert A. Greene

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COUNSEL for DEFENDANT DELL INC.

CERTIFICATE OF SERVICE

I certify that this document was filed electronically pursuant to Local Rule CV-5(a) on **June 5, 2015**. Pursuant to Local Rule CV-5(a)(3)(A), this electronic filing acts to electronically serve all counsel who have consented to electronic service via the Court's CM/ECF system.

/s/ Gilbert A. Greene

Gilbert A. Greene